IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER THE CASE IS OR IS NOT
APPROVED FOR REPORTING
[Chapter VIII, Rule 32(2) (b)]
Description of case

Appeal From Order No. 1525 of 2001 Decided on: April 19, 2006

With

Appeal From Order No. 1526 of 2001

A.F.R. (Approved for Reporting)
Not approved for Reporting

Date 19.04.2006

(Initial of Judges)

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judges for signature.

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal From Order No. 1525 of 2001

1. Smt. Rekha Rani
   W/o late Sri Shyam Sunder

2. Master Nishant Mittal
   S/o late Sri Shyam Sunder

3. Km. Sonali
   D/o late Sri Shyam Sunder

4. Km. Mittali
   D/o late Sri Shyam Sunder

5. Km. Madhavi
   D/o late Sri Shyam Sunder
   All R/o 13/26, Akhara Mohalla,
   Dehradun.
   (Appellants Nos. 2 to 5, through their
   Mother / natural guardian Smt. Rekha Rani)

……. Appellants

Versus

1. U.P. State Road Transport Corporation
   Lucknow, through its Regional Manager,
   Gandhi Road, Dehradun.

2. Sri Sunder Lal Badoni,
   S/o Sri Raghva Nand Badoni,
   Driver, U.P. Roadways City Bus Service /
   Stand, Rajpur Road, Dehradun.
   Residing at Vill. Mothorawala,
   P.S. Clement Town, Dehradun.

…… Respondents

Mr. H.M. Bhatia, Advocate on behalf of Mr. M.C. Pant, Advocate for the appellants.
Mr. A.N. Sharma, Advocate for respondent No. 1.

Along With

Appeal From Order No. 1526 of 2001

1. U.P. State Road Transport Corporation
Through its Regional Manager,
District Dehradun.

2. Sri Sunder Lal Badoni,
S/o Sri Raghva Nand Badoni, (Driver)
City Bus Stand, Rajpur Road,
Dehradun.

……. Appellants

Versus

1. Smt. Rekha Rani
W/o late Sri Shyam Sunder
2. Master Nishant Mittal
S/o late Sri Shyam Sunder
3. Km. Sonali
D/o late Sri Shyam Sunder
4. Km. Mittali
D/o late Sri Shyam Sunder
5. Km. Madhavi
D/o late Sri Shyam Sunder
All R/o 13/26, Akhara Mohalla,
Dehradun.
(Respondents Nos. 2 to 5, through their
Mother / natural guardian Smt. Rekha Rani)

…… Respondents

Mr. A.N. Sharma, Advocate for the appellant No. 1.
Mr. Arvind Vashishth and Mr. Yogesh Kumar Pandey, Advocates for the respondents.

Coram : Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

Dt: 19th April, 2006

Hon'ble Prafulla C. Pant, J. (Oral)

These two appeals, preferred under Section 173 of the Motor Vehicles Act, 1988, are directed against the judgment and award dated 21.08.2001 in Motor Accident Claim Case No. 77 of 1995, passed by learned M.A.C.T. /

District Judge, Dehradun, whereby the claimant's petition under Section 166 of the aforesaid Act was allowed for a sum of Rs. 4,81,000/- as compensation to be paid by the U.P. State Road Transport Corporation.

2) Brief facts of the case are that on 06.02.1995, Shyam Sunder (deceased) was going from Patel Nagar of Saharanpur Chowk, in Dehradun, on his scooter bearing registration No. U.G.Y. / 5590. It is alleged in the claim petition that he was going on the left side of the road with a moderate speed. When he reached near Mata Wala Bagh Gate, suddenly, a bus bearing registration No. U.G.Y. / 8217, owned by the U.P. State Road Transport Corporation, which was being driven rashly negligently by its driver respondent Sunder Lal Badoni, dashed at the scooter. Consequently, the scooterist received grievous injuries and succumbed to the same. In the claim petition it in also alleged that the deceased used to do business of dairy products and his earning was Rs. 3,500/- per month at the time of his death. Claimant No. 1, Smt. Rekha Rani is widow of the deceased. Claimant No. 2, Nishant Mittal is son of the deceased . Claimants Sonali, Mitali and Madhavi are daughters of the deceased. The claimants claimed a sum of Rs. 15,00,000/- as amount of compensation with interest thereon.

3) The claim petition was contested by the U.P. State Road Transport Corporation and driver of the vehicle registration No. U.G.Y. / 8217, who filed a common written statement, in which most of the contents of the claim petition were denied but it is admitted that on 06.02.1995, at about 9:15 P.M., when the aforesaid bus was

passing through the Mata Wala Bagh towards Patel Nagar, the deceased who was coming from the opposite direction on his scooter registration No. U.G.Y. / 5590, dashed with the same. It is further pleaded in the additional pleas of the written statement that the driver of the bus was neither rash nor negligent in driving the vehicle in question. Instead, he made every effort to avoid the accident and took the bus into *Kuchcha* on the left side of the road and the bus stopped after it dashed with a standing truck and a tree. It is stated in the written statement that it was the scooterist who was rash and negligent in driving his scooter and had himself dashed the scooter at the aforesaid bus. It is also pleaded by the defendants that the Insurance Company with whom aforesaid scooter was insured was not impleaded as a party and the answering defendants were not responsible for the loss suffered by the claimants.

4) On the basis of the pleadings of the parties, following issues were framed by the learned Motor Accident Claims Tribunal:

1. *Whether, the impugned accident took place due to the rash and negligent driving on the part of the driver of the bus U.G.Y. / 8217, if so, its effect?*
2. *Whether, the claimants are entitled to any amount of compensation, if so, what amount and from whom?*
3. *Whether, the claim petition is bad for non-joinder of the Insurance Company with whom the scooter was insured?*
4. *To what relief, if any, the claimants are entitled?*

5) The Tribunal after recording the evidence and hearing the parties, came to the conclusion that the driver of the bus was rash and negligent in driving the vehicle. It further concluded that the defendants have suffered loss of Rs. 4,81,000/- and accordingly, awarded the amount of compensation in favour of the claimants. Dissatisfied by said award, the claimants have filed Appeal From Order No. 1525 of 2001 for enhancement of the amount of compensation while the U.P. State Road Transport Corporation, the owner of the bus, has filed Appeal From Order No. 1526 of 2001 challenging the impugned award on the ground that there was no fault on the part of the driver of the bus rather there was contributory negligence on the part of the scooterist in the accident.

6) We heard learned counsel for the parties in both the appeals and perused the records.

7) Learned counsel for the U.P. State Road Transport Corporation argued that since the scooterist was coming from the opposite direction and dashed with the bus, as such, the Tribunal has erred in law in not holding the scooterist (deceased) partially negligent. We have closely examined the evidence adduced by the parties before the Tribunal. O.P.W. 1, Sunder Lal, the driver of the bus has stated in his cross examination that the scooter dashed at the bus on the right hand side of the bus. That being so, the scooterist (deceased) must be driving his vehicle on his left side. Not only this, this statement of the driver of the bus further makes it clear that it is not a case of head on collision, on the basis of which it can be said that there was a contributory negligence on the part of the scooterist. As

such, we are unable to agree with the contention of the learned counsel for the U.P. State Road Transport Corporation, that the scooterist (deceased) was a fault. We are in agreement with the finding of the learned Tribunal that from the evidence of P.W. 2, Raj Kumar, an eyewitness of the accident, it is established on the record that it was the driver of the bus who was rash and negligent in driving the vehicle at the time of the accident.

8) On behalf of the claimants it is argued before this Court that the amount of compensation awarded by the Tribunal is less than the loss suffered by the claimants. In this connection, it is further contended on behalf of the claimants that the multiplier of 17 applied by the Tribunal is on the lower side. We do not see any force in this submission for the reason that the age of the deceased was 30 years at the time of his death and any multiplier around 15 would have met the ends of justice, keeping in view the circumstances of the case. Therefore, multiplier of 17 cannot be said to be on the lower side from any angle.

9) No other point is pressed on behalf of the parties contesting the appeals.

10) In view of the reasons as discussed above, we are of the view that there is no error of fact or that of law in the impugned award, nor is there any scope of interference with the same. Accordingly, both the appeals are liable to be dismissed. The appeals are dismissed. No order as to costs.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**

Dt. 19th April, 2006.
H.Negi